WP(C) 944/2007
BEFORE
THE HON'BLE MR JUSTICE RANJAN GOGOI
JUDGMENT & ORDER (oral)

1. The petitioner, a proprietorship firm, is engaged in the business of sale of coal which is mined in Meghalaya. As the petitioner is engaged in the business of sale of such coal in the several States of Northern India including Bihar the coal has to be transported in trucks through the State of Assam. In the present writ petition the petitioner complains of arbitrary and aggressive actions on the part of the respondents in not permitting movement of the coal-laden trucks through the State of Assam without payment of tax under the Assam Value Added Tax Act, 2003 (hereinafter referred to as the Act).

2. The geographical location of the North-Eastern States mandate that the trucks loaded with coal of the petitioner has to necessarily move through the State of Assam though such coal may be in transit to the other States in the course of inter-State trade and commerce. Keeping in mind the provisions of Part XIII of the Constitution and also the taxing power of the State legislature under the provisions of the Seventh Schedule to the Constitution, legislations laying down the norms for such movement including prescriptions of regulatory measures in order to prevent leakage of the State's share of revenue, have held the field from time to time. The Assam Value Added Tax Act, 2003 which is currently in force elaborately deals with the above situation. Yet as disputes have cropped up from time to time the Court is of the view that the legislative norms holding the field should be reiterated and clarified at the earliest, to obviate, to the extent possible, avoidable litigations and also ensure free flow of trade and commerce throughout the territories over which this Court exercise jurisdiction. This is why final orders in the writ petition are being passed within two days of the institution of the same.

3. The legislative provisions are clear and unambiguous and really require no reiteration or clarification. If the mutual obligations i.e. of the transporter and the enforcement agencies are performed in the spirit the enactment has visualized, the Court sees no room for a possible dispute. It is not the law but human shortcomings, on either side, that has given rise to frictions from time to time. Consequently the Courts have to step in to guide such mutual actions to ensure a friction free social order.

4. Under Section 76 of the Act goods carried in the course of inter-State trade and commerce, on its entry into the State of Assam can be carried further on the basis of a transit pass to be issued at the first check post (hereinafter referred to as the Entry Check Post) on the inter-State boundary. The Act, inter alia, contemplates that the goods in transit will be accompanied by valid and complete documents on the basis of which an application is required to be made for issue of a transit pass. The authority at the check gate is required by the Act to satisfy itself that the documents as well as the goods actually carried in the truck are in order and thereafter a transit pass is required to be issued to facilitate further movement within the State. At the last check post within Assam (hereinafter referred as the Exit Check Post) the goods as well as the documents are required to be re-verified in the light of the entries made in the transit pass issued and if everything is in order the goods are to be permitted to leave the territories of the State of Assam. An endorsement to the effect that everything is in order i.e. goods mentioned in the transit pass have been transported out of the State is required to be made in the transit pass by the authorities of the Exit Check Post. The transit pass containing such an endorsement is required to be filed before the authorities of the Entry Check Post so that satisfaction can be derived that none of the goods which are carried in the course of inter-State trade and commerce are actually unloaded within the State of Assam. This is the scheme of the Act which enjoins upon both parties to perform mutual obligations which if carried out in the right earnest can give rise to no possible misgivings. At this stage it must also be noticed that there is a power vested

by the Act in the authority of the first check post i.e. Entry Check Post to realize security. Such power, it is contemplated, will be exercised in a situation there is some doubt or ambiguity with regard to the ownership of the goods carried or the documents accompanying such goods or where the transporter does not have a local permanent address within the State of Assam. Only in such situations security can be levied which is liable to be refunded once the transit pass containing the endorsement to the effect that the goods have moved out of the State is submitted at the Entry Check Post. It must also be noticed at this stage that there is no power vested in any authority by the Act, as none can be to levy any tax on the goods at the entry check gate.

5. The mutual obligations having been noticed, the Court can only require the transporter to comply with the requirements spelt out by the Act as noticed above and the authority at the two check posts to arrive at the requisite satisfaction on materials that are relevant. In so far as imposition of security is concerned, the circumstances in which such security can be realized have already been noticed. What however must be taken note of is the absence of any requirement of recording or communication of reasons prior to imposition of security. This is a possible area where frictions may develop and hence require the specific attention of the Court.

6. In a situation where the statute has omitted to incorporate the requirement of recording of reasons, such omission must be understood to be deliberate, based on legislative wisdom and not to be unintended. However, it is axiomatic that in a system governed by the Rule of Law every governmental action or decision must be based on sound, good and acceptable reasons. All such decisions must satisfy the test of reasonableness and fairness besides the legality thereof in the event of a challenge being brought before the Court.

7. The power to insist on deposit of security is circumscribed by the Act by prescription of certain conditions precedent. The exercise of such power is hedged by the requirement of generation of satisfaction in the check post authority that the conditions precedent exist in a given case. Though not specifically expressed, communication of the reasons to the concerned person as to why security is being insisted upon will ensure fairness; act as a check against arbitrariness; promote good administration and also further the constitutional scheme envisaged by Part-XIII of the Constitution. The following observations of Lord Denning in Seaford Court Estates Ltd. v. Asher, (1949) 2 ALL ER 155, approved by the Apex Court amongst others in (i) Hameedia Hardware Stores v. B. Mohan Lal Sowcar, reported in AIR 1988 SC 1060, (ii) Smt. Pushpa Devi and others v. Milkhi Ram (Dead) by his L.Rs., reported in AIR 1990 SC 808, and (iii) N. K. Jain and others v. C. K. Shah and others, reported in AIR 1991 SC 1289, will justify the above view.

> The English language is not an instrument of mathematical precision. Our literature would be much poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this and that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if the Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written work so as to give 'force and life' to the intention of legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do so as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

8. The above observations, with due elasticity, the Court must add and observe, must apply to myriad situations in the context of the ever-increasing number of legislations that are being attempted to deal with the fast changing social, political and economic order in our vast country. The Court must however hasten to add that the view it has taken in the present case must not be understood to be requiring the check gate authority to pass a detailed and reasoned order. No such requirement can be understood in the absence of any expressed provisions to the said effect under the Act. Also the Court must not be oblivious of the ground realities. Reasons for imposition of security have to be formulated on the spot i.e. at the check post on the inter-State boundary and in situations where a huge volume of traffic has to be continuously handled. Consequently, a mere formulation indicating how the mind has been applied will suffice. However, how such a formulation can best be made should be left to the administrator to decide.

9. Having noticed the salient features of the Act regulating inter-State movement of goods through the State of Assam; the mutual obligations cast by the statute and the Court having held that the reasons for imposition of security should be informed to the affected person, nothing further will survive except that the movement of the coal of the petitioner, which has been alleged to have been stopped, shall now be permitted in accordance with the present directions. As the directions contained in the present order are capable of taking care of grievances that may arise, from time to time in the future, it is also considered appropriate to direct the Commissioner of Taxes to incorporate the salient features of the present directions in the form of a Circular to his subordinate officials to ensure due compliance of the same by all concerned.

10. The writ petition, consequently, shall stand answered and closed in terms of the above directions.